

**CITY COUNCIL
SPECIAL MEETING MINUTES
March 29, 2011**

A Special Meeting of the Monroe City Council was held on March 29, 2011, in the Council Chambers at City Hall. Mayor Robert Zimmerman called the meeting to order at 7:00 p.m.

Councilpersons present: Balk, Stima, Rodriguez, Cudaback, Tuttle, Williams, and Goering.

Staff present: Feilberg, Quenzer, Smith, Wright, and Martinson.

City Attorney Zach Lell was present. Attorney Dave Ellenhorn was also present for the continued public hearing.

The meeting was opened with the Pledge of Allegiance.

Mayor Zimmerman explained that there was a need to have the executive session now, due to the individual involved having to leave soon. They will be in executive session for approximately 10 minutes for purposes of discussing pricing of property. City Attorney Lell referenced RCW 42.30.110(1)(c) and stated that there may be action in open session following the executive session.

Council, Mayor, Attorney, and staff members departed Council Chambers for the executive session, due to the size of the audience attending the meeting.

MEETING RECESSED INTO EXECUTIVE SESSION:	7:02 p.m.
EXECUTIVE SESSION WAS EXTENDED	
MEETING RECONVENED INTO REGULAR SESSION:	7:15 p.m.

There was no action after the executive session

PUBLIC HEARING

North Kelsey/Development Agreement/North Parcel; A. Citizen Testimony; B. Council Action/Development Agreement with Sabey

Mayor Zimmerman explained that any outbursts from the audience would not be tolerated and people would be removed from Council Chambers, if they don't remain respectful.

City Attorney Lell reminded Council that this was a quasi-judicial hearing for purposes of the Development Agreement and its constituent parts. He reiterated his comments from the opening of the original hearing on March 15th, and reminded Council that they were still under a continued obligation to observe *Appearance of Fairness Doctrine* procedural requirements.

He also asked Council if there was any change to their original responses regarding any personal interest, financial interest, group affiliation interest, or ownership of property near the project. The entire Council confirmed that there were no changes to their original responses.

He also verified for the record whether each councilmember could fulfill his/her responsibilities without bias or prejudice. The entire Council responded in the affirmative.

He then asked Council if there had been any ex parte communications since the March 15th hearing.

Councilperson Balk stated that citizens asked him whether they would be able to make additional comments. He told them they could send comments until March 18, 2011; but, didn't discuss it further.

Councilperson Stima stated that people had approached him to tell him whether they supported or didn't support it. He didn't comment further to the citizens.

Mayor Zimmerman explained that he also had citizens ask about additional comments and he told them they could submit comments until March 18th, too. He didn't comment to them any further.

City Attorney Lell explained that State law gives individuals the opportunity to rebut any of the ex parte communications. It could only be rebutted within the scope of the disclosed information.

Steve Jensen asked if they could rebut if there was other evidence about one or more Councilmembers. City Attorney Lell stated that it would be covered under the next procedural matter, that any party of record could raise a challenge to any new information that hadn't already been disclosed. If the opportunity was not taken, it must be waived.

Mr. Jensen asked if this would apply if he has issues with the attorney. City Attorney Lell explained that the attorney is not subject to the *Appearance of Fairness Doctrine*, as he is not a part of the decision body; he is a legal advisor.

Mayor Zimmerman explained that this is a continuation of the hearing and doesn't allow for any further public testimony. They will have applicant and staff rebuttal, with staff presenting first.

Associate Planner Russ Wright explained that the Development Agreement is consistent with code. Public testimony was reviewed and staff also looked back at other written comments prior to that. The comments cover three topics: concerns over land use, traffic, and design guidelines.

He explained in detail why this project meets the requirements for the North Kelsey Development Plan and Guidelines. The applicant had also brought alternate designs to ensure that the design concerns were addressed. Also, a traffic analysis from Jones and Stokes had suggested eight improvements that should be made before the full build-out of North Kelsey. Six of the eight improvements that were suggested have been completed. The other two improvements are slated for completion in 2011 and 2012.

Jack McColloch, 701 5th Avenue Seattle, represents Walmart and Sabey for their rebuttal. He stated that they have been busy the last two weeks and want to highlight what they have done. Four people will be presenting today: Jeff Chambers, PACLAND, Katherine Jerkovitch, project architect; Mike Swensen, traffic engineer; and Jennifer Spall, from Walmart.

Jeff Chambers, project engineer, explained the site plan refinements, including changes to the front entrance, landscaping added to the back of the building to block it from Chain Lake Road and the added pedestrian connection to the frontage.

Jack McColloch explained that they had considered citizen and Council comments. Although the original plans complied with design guidelines, they wanted to provide an alternate design.

Katherine Jerkovitch, of BCRA, 2106 Pacific Avenue, Suite 300, Tacoma, WA, explained that when they start on a project, they visit the community and site and look at the character of the neighborhood. She showed the comparison between the two plans and the changes of materials and colors. She also described the other changes to features outside the store, such as additional pedestrian lighting, and changes to the column materials. She compared the front elevation of the original design and the alternative design, stating that they were both consistent with North Kelsey (NK) design guidelines.

Mike Swenson, 11730 118th Ave NE., Suite 600, Kirkland, highlighted materials in the packet. He explained the Trip Generation Summary and that they are predicting an estimated 6,000 trips per day roundtrip. He explained the process they went through and traffic model and analysis. He further explained that the City doesn't regulate concurrency to be met during a train event. Trains are unpredictable with time and length. The City manages the transportation system to provide longer turn lanes to manage queuing.

Jennifer Spall, Walmart 10604 NE 38th Place, Kirkland, is excited to become part of the community. Walmart will bring jobs and stimulate the economy. Walmart donated \$100K last year in Snohomish County. They were willing to go back to the drawing board for alternative design concepts. All are in compliance with City standards and the NK Plan. Public support has grown, evidenced by the 1831 signed pledges. One-third of signatures are from Monroe and two-thirds are from the Sky Valley area. She explained how much Walmart spends on Washington state suppliers and Walmart's competitive wages and benefits.

Jack McColloch closed by stating that this is a quasi-judicial situation, which puts Council in the place of acting as judges. He encouraged them to look at the records and how they match the standards. The standards have two principal areas: NK Guidelines and traffic from a planned action ordinance. They have provided two designs. The new design has more use of stone and timbers and is a unique design for Walmart. Staff and Makers have said that both designs comply. Council can reach only one conclusion: select one design; they both comply. This is about the plans, about the rules, and about the facts in front of them. They are here tonight to ask Council for approval, based on the code and guidelines.

After discussion and comments, the motion was made by Councilperson Goering and seconded by Councilperson Stima to close the evidentiary portion the public hearing.

After further discussion and questions about the process, the motion was on the floor to close the evidentiary portion of the hearing. On vote,

Motion carried 7/0.

The motion was made by Councilperson Stima and seconded by Councilperson Rodriguez, to adopt the alternate Conceptual Site Plan and approve the Development Agreement, including the Binding Site Plan and grading permit.

The motion was made by Councilperson Balk and seconded by Councilperson Cudaback, to amend the original motion to provide for an offset crosswalk.

After discussion, the motion was on the floor to amend the motion to provide for an offset crosswalk. On vote,

Motion carried 5/2.

Councilperson Goering and Stima were opposed.

The motion was made by Councilperson Balk and seconded by Councilperson Goering, to direct staff to provide for a gravel path from the NW corner of Chain Lake Road to past the stormwater retention pond to connect to the parking lot area. On vote,

Motion carried 7/0.

The motion was made by Councilperson Balk and seconded by Councilperson Cudaback that the Plan would come back with adequate buffers between the pedestrian corner feature and Lot #3, to ensure garbage handling does not face the corner feature and that there are landscape buffer on Lot #3 between the feature and the building.

Mayor Zimmerman stated that this is a separate matter for later. Councilperson Balk explained why he wants it stated now, as a future Council may not control this issue.

The motion was on the floor to direct staff to include in the Development Agreement that a buffer would be created between the corner feature and Lot #3, and that garbage handling does not face the corner feature, On vote,

Motion carried 5/2.

Councilpersons Goering and Rodriguez were opposed.

The Motion was made by Councilperson Balk and seconded by Councilperson Tuttle, to double the amount of landscaping, provide at least three tables, to increase the number of benches by 50%, and to provide for at least four hanging flower pots. On vote,

Motion carried 6/1.

Councilperson Goering was opposed.

After discussion, the motion was made by Councilperson Balk and seconded by Councilperson Tuttle, to amend the motion to include in the Conceptual Site Plan a mixed-use bike/pedestrian path from North Kelsey to the main store. On vote,

Motion carried 7/0.

The motion was made by Councilperson Stima and seconded by Councilperson Rodriguez, to extend past 10:00 p.m. On vote,

Motion carried 7/0.

Councilperson Stima made a friendly amendment to his own motion, to prohibit the development of a gas station on Lot #3; the seconder accepted the friendly amendment.

The motion was on the floor to approve the Development Agreement as amended. On vote,

Motion carried 6/1.

Councilperson Cudaback was opposed.

Mayor Zimmerman explained that there would be a five-minute break.

MEETING RECESSED FOR A FIVE-MINUTE BREAK: 10:04 p.m.

MEETING RECONVENED INTO REGULAR SESSION: 10:10 p.m.

FINAL ACTION

Discussion and Potential Vote Regarding Amendment to North Kelsey Real Estate Purchase & Sale Agreement

Attorney Ellenhorn explained that this is the first Amendment to the Purchase and Sale Agreement. After looking at a prior survey, they discovered that Parcel K was unintentionally left out of the legal description in the Purchase and Sale Agreement. It is the parcel that would go into the landscaping at the stormwater retention area just off Chain Lake and North Kelsey. The

approximate 2500 square-foot area is needed for the complete buildout. The Amendment would authorize the legal description to be amended to include that area.

The motion was made by Councilperson Goering and seconded by Councilperson Rodriguez approve the Amendment to the Purchase and Sale Agreement as described by Attorney Ellenhorn.

After clarifying questions, the motion was on the floor to authorize the Amendment to the Purchase and Sale Agreement. On vote,

Motion carried 7/0.

COMMENTS FROM CITIZENS

Steve Jensen, 17041 155th Street SE, Monroe, is concerned about the actions or lack of action on the part of the City Attorney pertaining to protection for the City in the Purchase and Sale Agreement and the ability for the City to renegotiate. He was also concerned that Council wasn't asked whether they shop at the store or intend to shop at the store during the disclosure portion of the hearing. He questioned whether it was biased or insufficient legal advice.

City Attorney Lell asked the City Clerk to include Mr. Jensen's comments in the record as an ex parte communication, when the resolution is brought forward for Council's consideration.

Vickie Mullen, 10312 210th Street, Snohomish, reminded Council to not forget the Downtown Sub-Area Plan, once things are back to normal. There is still financing for one more sub-area to be discussed.

Attorney Ellenhorn explained that he tried to get the bold language out of the Purchase Agreement allowing the Purchaser to renegotiate if the parcel came back smaller. The purchasers were told that there would be no way that they could renegotiate the price. The City wasn't left unprotected. There are things that look odd in the agreement; but, sometimes you decide to just stop fighting about it and move on.

Councilperson Stima made a general statement that City Attorneys Lell and Ellenhorn have given excellent representation. He has the utmost confidence in what they are doing and that they will continue to look out for the City's interests.

Discussion Regarding and Vote to Suspend Hiring Freeze to Fill Two Vacant Planner Positions

Human Resources Manager Smith explained that two planners will be leaving at the end of the month. She noted the organization structure and explained the new proposed position of Planning, Permitting, and Economic Development Manager. They would fill the vacant Associate Planning position and eliminate the Assistant Planner position. She explained what each position would focus on and that the Manager position would be a dual role. She feels that structuring the department this way would support the organization that was approved by Council.

Mayor Zimmerman explained that part of the focus was to create a permitting system that is more efficient and effective to promote the permit process going more quickly and to provide exceptional service. It is not his recommendation to go with a Planning, Permitting, and Economic Development Director, but with the Manager role. The position would focus on long-range development and new business. Concerns have been stated that they would work against each other. He doesn't believe that there is a conflict.

After discussion, the motion was made by Councilperson Goering and seconded by Councilperson Rodriguez, to suspend the hiring freeze to fill the vacant Associate Planner position. On vote,

Motion carried 6/1.

Councilperson Balk was opposed.

The motion was made by Councilperson Goering and seconded by Councilperson Rodriguez, to suspend the hiring freeze to fill the Planning, Permitting, and Economic Development Manager role.

After Councilpersons expressed the desire to discuss the job description more fully, City Attorney Lell explained that anything that wasn't part of the Special Meeting Notice could not be discussed tonight.

The motion was withdrawn by the maker and the seconder.

This topic will be brought back for further discussion at another Council meeting.

COUNCILMEMBER REPORTS

Councilperson Williams wished Planners Russ Wright and Ben Swanson well in their new jobs.

Mayor Zimmerman thanked Planner Wright for the work he has done for the City.

MAYOR/ ADMINISTRATIVE STAFF REPORTS

Draft Agenda/April 5, 2011 Council Business Meeting

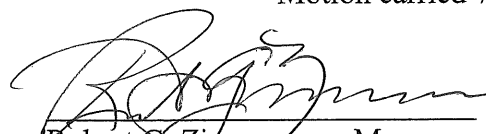
Mayor Zimmerman presented the draft agenda for April 5, 2011.

There being no further business, the motion was made by Councilperson Williams and seconded by Councilperson Goering to adjourn the meeting. On vote,

Motion carried 7/0.

MEETING ADJOURNED: 11:57 p.m.


Eadye Martinson, Deputy City Clerk


Robert G. Zimmerman, Mayor